IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-10-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.9740 of 2007
and
MP Nos.1 and 3 of 2007

R.Vijayakumar .. Petitioner

vs

1.The Bar Council of Tamil Nadu
Rep. By its Secretary
High Court Campus
Chennai 104.
2.K.Ramu
(R2 impleaded as per order
dated 19.9.2007 in MP 2/2007) .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the case pertaining to D.C.C.No.25/2007 dated 20.2.2007 on the file of the first respondent and to quash the same as arbitrary and illegal.

For Petitioner : Mr.S.Sethuraman
For Respondents : Mr.Venkatakrishnan for R2
Mr.C.Kanakaraj for R1

ORDER

Seeking to quash an enquiry pending on the file of the first respondent Bar Council of Tamil Nadu in D.C.C.No.25/2007 dated 20.2.2007, the petitioner has brought forth this writ petition for a writ of certiorari.

2.The affidavit in support of the writ petition and the affidavit filed by the second respondent in support of petition to vacate the stay, are perused. The Court heard the learned Counsel on either side.

3.The case of the petitioner in short is that he is a practicing Advocate in Madras; that a power of attorney was executed by one Kannappa Pillai and his brther Balu Pilli for sale of their immovable property; that apart from that, they have also executed an agreement for sale for a consideration of Rs.7,37,000/- pursuant to which the property was sold to the third parties; that the amount which would represent the consideration for sale of

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those property, has also been actually paid to them, and thus, the entire transaction came to an end; that while the matter stood thus, the second respondent and others issued a notice to the petitioner on 25.4.2006, stating that the father of the second respondent executed a power of attorney authorizing the petitioner to alienate the property measuring 66.67 cents in Vengambakkam Village, and the property was an ancestral property, and the second respondent is entitled for a share, and apart from that, the said power was obtained by the petitioner by coercion and undue influence; that it was also further averred therein that a criminal complaint has also been given in that regard, and the power of attorney originally executed in his favour, was also cancelled; that the said notice was replied by the petitioner; that thereafter, a notice was served upon him by the first respondent Bar Council stating that a complaint was given by the second respondent on 20.7.2006 for which the petitioner gave a detailed reply; but, no proceedings have been initiated thereon; that instead, a second notice was served upon him alleging that a complaint was received from the second respondent on 8.8.2006 and the disciplinary proceedings were to be initiated and calling for his explanation; and that under such circumstances, the petitioner was constrained to file this writ petition seeking to quash the same.

4.Advancing the arguments on behalf of the petitioner, the learned Counsel would submit that in the instant case, the entire proceedings initiated by the first respondent Bar Council, have got to be quashed for two reasons; that firstly, in respect of the proceedings under Sec.35 of the Advocates Act, 1961, on a complaint given by a person, it should be first established that there was relationship of Advocate and client between the parties; that in the case on hand, the second respondent, who was the complainant therein, had no locus standi since there was no privity of contract, nor was there any relationship between the petitioner and the second respondent; that secondly, even as per the complaint, the power of attorney was executed not only by the father of the second respondent Kannappa Pillai, but also by the brother of Kannappa Pillai namely Balu Pillai; that on the same facts, a criminal complaint was given before D1 Triplicane Police Station; but, no action was taken; that at that juncture, the second respondent approached this Court seeking for a direction; that accordingly, a direction was given, pursuant to which a case came to be registered in Crime No.510/2007; that the same is pending investigation; that it was alleged in the complaint that there was criminal intimidation, coercion and undue influence by which the power of attorney had been obtained from the said Kannappa Pillai and Balu Pillai; that the investigation is also pending; that in the instant case, the Bar Council had no jurisdiction to proceed with the matter, and hence, it has got to be quashed.

5.The Court heard the learned Counsel for the second respondent, according to whom, in the instant case, the said Kannappa Pillai was 90 years old and lacked in his vision; that the petitioner, a practicing Advocate, had obtained the power of

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attorney from his father Kannappa Pillai and the brother of Kannappa Pillai namely Balu Pillai, by exercising undue influence and coercion on the strength of which he sold the property also; that on coming to know about the same, a complaint was given not only to the police but also to the Bar Council; that not even any part of the consideration has been paid to either Kannappa Pillai or Balu Pillai; that in the instant case, originally, the complaint given on 20.7.2006, was taken on file by the first respondent Bar Council; that pursuant to the same, a notice has also been issued to the petitioner; but, subsequently, it was found that the complaint was not in the proper format, and hence, the subsequent complaint was given in the format on 8.8.2006, pursuant to which a notice has been issued; that now, proceedings have been initiated; that merely because criminal proceedings are pending, there is no bar in law for the Bar Council to further proceed with the alleged misconduct of the petitioner, who is a practicing Advocate, and under such circumstances, the writ petition has got to be dismissed.

6.The Court paid its anxious consideration on the submissions made.

7.It is not in controversy that the petitioner herein, a practicing Advocate, has obtained a power of attorney from one Kannappa Pillai, the father of the second respondent and also the brother of Kannappa Pillai namely Balu Pillai, pursuant to which he also sold the property. Now, the complaint has been given to the Bar Council alleging that the said power of attorney was obtained by the petitioner from the father of the second respondent and Balu Pillai by exercising undue influence and coercion. If the same is proved, it would go against the conduct of the petitioner as an Advocate. Apart from that, the entire property has also been sold pursuant to the power of attorney. According to the second respondent, not even any amount has been parted with. Under the circumstances, further allegations have been made in that regard. While the petitioner is a practicing Advocate and such allegations are made, there cannot be any bar for the Bar Council to proceed with the enquiry. The contention put forth by the learned Counsel for the petitioner that the relationship of the Advocate and the client is not shown, and hence, the complaint cannot be taken on file cannot be countenanced for the reason that the father of the second respondent from whom the power of attorney was obtained, is 90 years old. From the very allegations made in the complaint, it would be clear that the power of attorney has been obtained from the father of the second respondent by exercising undue influence and coercion. Under the circumstances, at the time of the enquiry, the second respondent's father has got to be examined as a witness since it was he who gave the power of attorney. The other contention is that pursuant to the complaint given by the second respondent, a case came to be registered by D1 Triplicane Police Station in Crime No.510/2007, and the matter is also pending investigation. Merely because of the registration of a criminal case which is pending investigation, there is no need or necessity to quash the proceedings now pending on the file of the Bar

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Council. But, at the same time, it would be fit and proper that the enquiry has got to be kept in abeyance till the disposal of the criminal case. Hence, the facts and circumstances do not warrant for quashing the proceedings; but, a direction has got to be given to the first respondent Bar Council to keep the proceedings initiated against the petitioner, in abeyance till the criminal case which has been initiated in Crime No.510 of 2007 on the file of D1 Triplicane Police Station, comes to an end. Accordingly, a direction is issued, and this writ petition is disposed of. No costs. Consequently, connected MPs are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

The Secretary
The Bar Council of Tamil Nadu
High Court Campus
Chennai 104.

+1cc to Mr.S.Sethuraman, Advocate Sr 63743
+1cc to M/s.C.Kanagaraj,Associates, SR 63543

PUR (CO)
km/24.10.

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